REPORT OF THE DEPARTMENT OF COMMUNITY SERVICES' LEGISLATION COMMITTEE

REGARDING THE CHILDREN'S SERVICES ACT

BACKGROUND

In September, 1988, the Minister of Community Services established a Legislation Committee consisting of the following persons: Martha Crowe, Administrative Officer, Department of Community Services and Chairperson of the Committee; Bill Greatorex, Administrator of Family and Children's Services, Department of Community Services; Alastair Bissett-Johnson, Professor of Law, Dalhousie Law School; Harvey MacArthur, Executive Director, Children's Aid Society and Family Services of Colchester County; Linda Smith, Director of Social Work at the I.W.K. Hospital; and Brent Cotter, Executive Director, Dalhousie Legal Aid.

The Legislation Committee was given the mandate to:

(1) review the reports received from individuals and groups in response to Professor Alastair Bissett-Johnson's report concerning amendments to the Children's Services Act;

(2) to make recommendations on other forms of consultations that might be needed as a result of the input from the reports received from individuals and groups in response to Professor Bissett-Johnson's report; and

(3) to give advice to the Minister and the Legislative Counsel on the text of amendments to the Children's Services Act.

At the time of the establishment of the Committee, the Minister of Community Services forwarded to approximately 55 individuals, and interest groups, a copy of Professor Bissett-Johnson's report concerning the Children's Services Act and invited them to make responses to the Committee on or before October 31, 1988.This time frame was subsequently extended to December 15, 1988.

COMMITTEE PROCESS

Commencing in October, 1988, the Committee held weekly meetings to discuss and analyze Professor Bissett-Johnson's report and the forty (40) written responses received from individuals, and interest groups. In January, 1989, the Committee held five additional day long meetings for the purpose of developing a tentative proposal for discussion with representatives of interest groups. A tentative proposal was developed and circulated to representatives of interest groups on February 1, 1989. This proposal formed the basis of meetings held on February 9th and 10th with representatives from interest groups. The comments received at these meetings were critical of the Committee's tentative proposal. The criticism varied from the concern that the proposal was "too pro-parent", "too pro-agency" or "too confusing". There were only a few minor peripheral issues that were not contentious.

The Committee's proposal represented an effort to strike an appropriate balance among the differing points of view expressed to it concerning the nature of legislative reform required in child protection matters. Since its proposal was so widely criticized, it was the Committee's view that it was necessary to reconsider a number of aspects of its proposal.

Since the Committee undertook to submit a report to the Minister of Community Services by the end of February, 1989, the Committee, within the time remaining, was unable to reconsider its proposal and to develop recommendations which it considered would effectively address the major areas where legislative reform is required.

While the meetings held on February 9th and 10th with the interest groups did not result in the Committee being able to finalize recommendations for legislative reform, the meetings did serve to provide the Committee with some insight into the problems that need to be addressed and a process that would facilitate the continuing review of the Children's Services Act.

Before we outline the problems which we believe need to be addressed, it must be pointed out that the review of the Children's Services Act has focused attention primarily on the negative aspects of the child welfare system. It should not be implied that there are no positive aspects. The Committee believes that there are many dedicated professionals providing a high quality of child protection services in Nova Scotia. They should be supported and encouraged in their efforts to help families and children.

THE PROBLEMS

It is the Committee's view that reform of the Children's Services Act is only one of the problems that needs to be addressed. There are many other areas that need to be dealt with in order to facilitate appropriate legislative reform. We found that we were trying to develop legislative proposals in a climate of frustration, anger and mistrust and that the viewpoints of the interest groups are polarized because of this.

Our assessment is that the following factors are contributing to the current climate:

- Lack of adequate resources to parents, children, agencies and the Courts to deal with families and children in crisis. It was not uncommon to hear the point made that the only way an agency can get money to help a child or family in need is to apprehend the child and then resources and money are available for the child and the family. We were advised of situations in which lawyers in fact became social workers and assisted their clients in obtaining the services they needed in order to have a child returned to them, for example accommodation and furnishings.

- Lack of communication and understanding between agencies and parents about how each perceives the other. In particular, we were made aware of the mistrust parents have of child welfare workers. Parents see them as imposing middle class standards and values on them and

removing their children when they fail to meet those middle class standards.

- The adversarial nature of child welfare proceedings. This adversarial approach does not necessarily address the best interests of the child.

- Lack of adequate resources to enable parents to have meaningful access to their children while their children are in the care of an agency. In some cases, parents are only able to visit their children every two weeks in the office of the child welfare agency and these visits may only be for an hour.

- Lack of adequate resources to deal with adolescents who are disturbed or out of control. The view was frequently expressed that the problems of adolescents could be, in large measure, addressed through the provision of new resources.

- The dependency of the child welfare system on other programs and services over which it has no control, for example, provincial and municipal financial aid programs. If resources from these programs and services are lacking, the goal of the child welfare worker to keep families together becomes increasingly difficult to achieve.

- Inadequate consultation with the native and black communities on services which are being provided to them in child welfare matters. It appears that more attention needs to be paid to the provision of culturally appropriate services.

- Regional disparity in the manner in which child welfare matters are handled, and regional disparity in the availability of resources.

A PROCESS FOR THE FUTURE

Based on the written and oral submissions which it received, the Committee believes that it is unlikely that an acceptable balance of the differing points of view can ever be achieved in relation to legislative reform in child protection matters. If legislative reform is to be achieved, it will have to be done by Government adopting a clear position on the reform and accepting the reality that any reform will attract support from some and criticism from others.

For the most part, the interest groups and agencies consulted on February 9th and 10th supported further consultations concerning legislative reform and working towards that reform in a careful and thoughtful manner.

However, the process which began last May when the Minister of Community Services commissioned Professor Bissett-Johnson to conduct a complete review of the Children's Services Act has raised the expectations on the part of all persons who have been involved in consultations with Professor Bissett-Johnson and in making submissions to the Legislation Committee. These individuals and agencies have committed a very significant amount of time and energy in carefully reviewing Professor Bissett-Johnson's report, in preparing submissions to the Legislation Committee, in reviewing the Legislation Committee's proposal and in appearing before the Legislation

Committee. These individuals and agencies are expecting the Government to demonstrate its commitment to children and families.

A mere continuation of the consultation process on legislative reform, without some further tangible demonstration by Government of its commitment to child welfare matters, will only serve to foster the frustration, anger and mistrust which currently exists. A meaningful consultative process in such an environment would be significantly impaired. In addition, the continued lack of communication and misunderstanding among the interest groups will also have a negative effect on the continuing review of the Children's Services Act.

Therefore, in order to address the problems previously outlined and to foster the continuing review of the Children's Services Act, the Committee recommends implementation of the following recommendations:

1. Continuation of a process for ongoing review of the existing Children's Services Act, with a view to developing legislation for introduction at the 1990 session of the Legislature.

   The continuation of the existing Committee which is comprised of persons who have full time commitments to other jobs does not represent the optimal process for legislative reform. If such a process were to be implemented, resources should be made available to assist any such Committee in its work.

   Any person or persons who are charged with the responsibility of conducting an ongoing review of the Children's Services Act should also be a part of the consultative process outlined in Recommendation #3.

   It should be noted that the Committee received a disparity of views on whether or not Bill 81 should be proclaimed. The Committee itself did not reach a consensus on whether or not this Bill should be proclaimed. Regardless of what action Government takes in relation to Bill 81, it will be criticized.

2. Allocation of additional funding for the following:

   (a) In-home support services to enable children to remain in their own homes, rather than be taken into the care of an agency;

   (b) Services to improve access visitation between parents and children who are in the care of an agency;

   (c) Purchasing special needs items for families to alleviate crisis situations which might otherwise put the child at risk;

   (d) Development of mediation in child welfare matters;

   (e) Assistance for parent support groups in defraying travel and child care costs incurred in conjunction with their support group activities; and

(f) Facilities and services for adolescents.

3. Establishment of a consultation process whereby representatives from the following interest groups meet on a regular basis to discuss issues of common concern relating to the child welfare system, including services, policies and procedures, and to develop a plan of action to deal with these common concerns: Children's Aid Societies, agents, Children in Care Network, parents rights groups, solicitors from legal aid services, child welfare agency solicitors, Association of Black Social Workers, MicMac Family and Children's Services, the Foster Parents Federation, Municipal Social Services Committees, and the Department of Community Services.

The consultation process described above would not have legislative reform as its main focus, although certainly it would not be beyond its mandate to examine and to make recommendations to the Minister of Community Services concerning legislative reform. However, initially, the focus should be on those non-legislative issues which would enhance the child welfare service delivery system, both at the regional and provincial level.

This consultation process should be facilitated by an independent and neutral person. Such a consultation process is likely to be rather time consuming for the facilitator and hence, there may be a need to provide for remuneration. Also, some of the groups listed have inadequate resources to enable them to absorb the travel, accommodation and child care costs associated with participation in this process; this should be taken into account and compensated for.